

**REMARKS**

Reconsideration of the application is respectfully requested.

**I. Status of the Claims**

Claim 10 has been canceled without prejudice or disclaimer of the subject matter therein.

Claim 11 has been amended, no new matter is added.

Claims 1-9 and 11-21 are pending.

**II. Rejections under 35 U.S.C. § 102**

The Examiner has rejected claims 1, 3-5, 7-11, 13-15 and 17-20 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,413,233 to Sites et al. ("Sites"). Applicants respectfully traverse the rejection. Claim 10 has been cancelled, rendering the rejection to this claim moot.

Claims 1 and 11 of the present invention recite a blood treatment device comprising "treating means that performs a predetermined treatment to blood collected from a patient" and directing treatment in response to a previously obtained ideal patient-specific blood parameter curve. In contrast, Sites does not disclose directing treatment in response to an ideal patient-specific blood parameter curve obtained previously by subjecting the patient to water removal treatment.

Applicants submit that Sites discloses a perfusion hyperthermia treatment and method wherein a body fluid, such as blood, is circulated within an extracorporeal fluid-treatment system in order to change the temperature of the body fluid, after which the blood is then perfused back into the patient to either warm, cool, or maintain the current temperature of the patient. The temperature change of the body fluid is controlled in response to temperature signals sensed at a plurality of patient locations. *See*, Sites, column 2, lines 36-47. Sites provides means for treating the blood in

the form of a blood preconditioner, which can add fluids such as saline and/or various drugs, and a blood postconditioner which can add oxygen and/or remove carbon dioxide from blood passing through the system. *See*, Sites, column 8, lines 57-67 and column 9, lines 1-4. Sites' system can treat pathogens, including some bacteria, cancers and viruses. Sites, column 3, lines 23-45.

In contrast to the claims, Sites only incorporates a software model that predicts how a patient will react to treatment after entering basic data such as patient weight, heart rate and other medical characteristics. Sites, column 15, lines 19-36. Sites does not collect patient reference data through a previous treatment that can be used by a controlling or directing means.

Thus, Sites does not disclose every element of claims 1 and 11. Further, claims 3-5, 7-9 depend from claim 1 and claims 13-15, 17-20 depend from claim 11 and are allowable based at least on their dependency to their respective base claims. Thus, Applicants respectfully request withdrawal of the rejections of claims 1, 3-5, 7-9, 11, 13-15 and 17-20.

## **II. Rejections under 35 U.S.C. § 103**

The Examiner has rejected claims 2, 6, 12, 16 and 21 under 35 U.S.C. § 103(a) as unpatentable over Sites, in view of U.S. Patent No. 5,830,133 to Osten et al. ("Osten"). The Examiner contends that Osten shows an approximation function/equation calculated based on an ideal blood parameter curve from a previously performed blood treatment, a feature absent from Sites. Applicants respectfully traverse the rejection.

Applicants submit that Osten only discloses prediction of a property of biological matter by observing a series of whole blood samples obtained from one or more animals of the same species. *See*, Osten, column 9, lines 14-21. Osten first obtains near-infrared spectra of a statistically

significant number of samples of whole blood to establish a so-called “training set” for mathematical comparisons against individual additional unknown samples of other whole blood. Once the training set of NIR spectra has been established, the nature of the inter-relationship hematocrit and water content is statistically correlated to establish a source of comparison for predicting unknown samples. Osten, column 4, lines 6-21. Therefore, Osten discloses the use of data from a statistical population to predict a property of biological matter.


In contrast, the present invention recites a first treatment which yields ideal reference data for a specific patient which is then used in a feedback loop to control a subsequent treatment for that patient. Further, claims 2, 6, 12, 16 and 21 depend from claim 1 and 11 and the arguments above regarding Sites are applicable to this rejection. Thus, the combination of Sites and Osten does not disclose or suggest to one of ordinary skill in the art all of the elements of the claimed invention.

**CONCLUSION**

In view of the above amendment, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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Attachments